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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|---------------------|------------------|
| 10/625,370 | 07/23/2003 | Ned W. Mizelle | 79139 | 8233 |
| 22242 | 7590 | 07/21/2005 | EXAMINER | |
| FITCH EVEN TABIN AND FLANNERY 120 SOUTH LA SALLE STREET SUITE 1600 CHICAGO, IL 60603-3406 | | | BURNHAM, SARAH C | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 3636 | |

DATE MAILED: 07/21/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/625,370 | MIZELLE ET AL. | |
| | Examiner | Art Unit | |
| | Sarah C. Burnham | 3636 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) Responsive to communication(s) filed on 30 June 2005.

2a) This action is FINAL. 2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) Claim(s) 7,8,12,13,17-19 and 29 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) Claim(s) 7-8, 12-13, 29 is/are allowed.

6) Claim(s) 17-19 is/are rejected.

7) Claim(s) 7,8,12 and 13 is/are objected to.

8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

| | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____ | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Objections

1. Claims 7-8 and 12-13 are objected to because of the following informalities: It appears as if the third instances of the word "a" should be deleted from line 14 of claim 7.
2. Claims 8 and 12-13 are objected to as being dependent upon an objected base claim. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.
3. Claims 17-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Borichevsky (4,273,379) in view of Gentry (6,848,746). Borichevsky discloses a chair apparatus (10) comprising a frame having a plurality of frame members (11), the frame members (11) being moveable between a first position for storage (Figure 3) and a second position for use (Figure 1); a backrest (unlabeled) defined by the upper extensions of leg members (13); a seat (unlabeled) defined by cross bars (12b) and (12d) and moveable relative to the frame members (11) given the folding nature of the chair (10), the seat comprising a first resilient seating layer (17), the seat support defining an opening (unlabeled) as the space between cross bars (12b) and (12d) and at least a portion of the first resilient seating layer (17) extending over the opening so

that the first resilient seating layer (17) is capable of extending below the seat support (unlabeled) defined by cross bars (12b) and (12d); the chair further including a second resilient seating layer (27) extending over at least a portion of the first resilient seating layer (17); and, wherein the frame mummers (11) include a first set of legs (14)(14) and a second set of legs (13)(13) pivotally connected to the first set of legs (13)(13) at pivot (15) and moveable between the first position and the second position, wherein the backrest extends between the second set of legs (13)(13) and the seat is support by the first (14)(14) and the second (13)(13) set of legs. The seat provides a predetermined seating area and the backrest provides a predetermined backrest area being larger (as best depicted in Figure 1) than the predetermined seating area.

Borichevsky discloses all claimed elements with the exception of a cover extending over the first resilient seating layer and comprising a first cover at the second set of legs and a second cover at the first set of legs.

Gentry discloses a seat cushion comprised of a second resilient material (25) and a cover (27). It would have been obvious to use the covered cushion disclosed by Gentry in place of the cushion disclosed by Borichevsky. The cover (27) could be removed from the cushion disclosed by Gentry to be washed, furthermore it facilitate the use of heating and cooling packs (23). The cover (27) has a first cover (49) that would lie at the second set of legs and a first cover (4) that would lie at the first set of legs.

Allowable Subject Matter

4. Claims 7-8, 12-13 and 29 are allowed.

Response to Amendment/Arguments

5. The amendment filed on June 30, 2005 has been considered in its entirety. Remaining issues are detailed in the sections above. In light of the new grounds of the rejection set forth, this action is made NON-FINAL.

Conclusion

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sarah C. Burnham whose telephone number is 571-272-6854. The examiner can normally be reached on M-Th 7:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Peter Cuomo can be reached on 571-272-6856. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Peter M. Cuomo
Supervisory Patent Examiner
Technology Center 3600

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